

United States District Court

for the
Western District of New York

United States of America

v.

Case No. 19-MJ- 721

PHILIP M. CLOSE

Defendant

CRIMINAL COMPLAINT



I, CHRISTOPHER TOSCANO, Task Force Officer with the United States Federal Bureau of Investigation, the complainant in this case, state that the following is true to the best of my knowledge and belief:

Between or about October 13, 2016 , through and including the present date, in the Western District of New York, the defendant **PHILIP M. CLOSE** violated Title 18 U.S.C. § 2251(a), an offense described as follows:

The defendant did knowingly employ, use, persuade, induce, entice or coerce a minor to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct, which visual depictions were produced using materials that had been mailed, shipped or transported in or affecting interstate or foreign commerce, in violation of Title 18, United States Code, Section 2251(a).

This Criminal Complaint is based on these facts:

SEE ATTACHED AFFIDAVIT OF CHRISTOPHER TOSCANO, T.F.O., F.B.I.

☒ Continued on the attached sheet.

Christopher Toscano

Complainant's signature

CHRISTOPHER TOSCANO, T.F.O., F.B.I.

Printed name and title

Sworn to before me and signed in my presence.

Date: December 10, 2019

Mark W. Pedersen

Judge's signature

City and State: Rochester, New York

MARK W. PEDERSEN, United States Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

I, CHRISTOPHER TOSCANO, being duly sworn, depose and state:

1. I am a sworn Task Force Officer with the Federal Bureau of Investigation and am a Deputy with the Monroe County Sheriff's Office. I have been a member of the Monroe County Sheriff's Office since February of 2012, and have been assigned to the Federal Bureau of Investigation, Child Exploitation Task Force, since March of 2017. I am trained to investigate and have participated in investigations involving a wide range of local, state, and federal criminal violations. In my position with the FBI Child Exploitation Task Force, I am responsible for investigating crimes against children, including the production, receipt, distribution and possession of child pornography, in violation of Title 18, United States Code, Sections 2251(a), 2252A(a)(2)(A) and 2252A(a)(5)(B).

2. The information contained in this affidavit is based upon my personal knowledge and observation, my training and experience, conversations with other law enforcement officers, and the review of documents and records. This affidavit is submitted for the limited purpose of establishing probable cause to believe that PHILIP M. CLOSE, (hereinafter "CLOSE") did knowingly employ, use, persuade, induce, entice or coerce a minor to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct, which visual depictions were produced using materials that had been

mailed, shipped or transported in or affecting interstate or foreign commerce, in violation of Title 18, United States Code, Section 2251(a).

3. Because this affidavit is submitted for the limited purpose of establishing probable cause to secure a criminal complaint, I have not included every detail of the investigation. Rather, I have set forth only the facts that are necessary to establish probable cause to believe that CLOSE did violate Title 18, United States Code, Section 2251(a).

BACKGROUND OF INVESTIGATION

4. The Close School of Music is located at 5017 West Ridge Road in the Town of Parma and offers private music lessons to children and adults of all ages.

5. CLOSE is the owner of the Close School of Music and an instructor there. According to the school's website—www.closemusicschool.com/Teaching-Staff—CLOSE has been teaching music lessons throughout New York State for over 20 years, including “preschool and kindergarten in multiple school settings and programs, specializing in teaching students with Autism and Special Needs.” CLOSE offers private lessons in drums and mallets, piano, bass, ukulele, mandolin, and banjo.

6. On or about December 5, 2019, at approximately 5:15 P.M., Cooperating Witness 1 (“CW1”) reported to the Monroe County Sheriff's Office (“MCSO”) that she had located a video camera attached to the toilet in the bathroom of Close School of Music, which is located at 5017 West Ridge Road in the Town of Parma.

7. CW1 informed MCSO that CW1 has two daughters, current ages 10 and 12, who have taken music lessons from CLOSE, the owner of the Close School of Music, for approximately six years. CW1's twelve-year-old daughter is referred to hereinafter as "Minor Victim 1."

8. On or about December 5, 2019, CW1 brought both of her daughters to their music lessons at the Close School of Music. CW1 indicated that, while waiting for Minor Victim 1 to finish her music lesson, CW1 used the bathroom. The bathroom is readily accessible to the public and the only bathroom in the Close School of Music. CW1 indicated that, while in the bathroom, she observed a small black camera lens facing towards the toilet seat. CW1 stated that there was a small metallic-looking piece hanging from a wire off of the toilet. CW1 stated that she grabbed and pulled the wires and found a camera-device and wires taped to the bottom of the toilet with black electrical tape. CW1 indicated that after finding this camera device, she removed it from the bottom of the toilet. Shortly thereafter, CW1 proceeded to contact 911 and report her findings to an MSCO Deputy. CW1 turned the camera-device over to the responding Deputy.

9. In response to CW1's 911 call, an MSCO Deputy went to the Close School of Music and proceeded to speak with CLOSE regarding the device that had been located in the bathroom. While speaking with the MSCO Deputy, CLOSE indicated that he should just "come clean" and acknowledged that the device located by CW1 was his. CLOSE indicated to the Deputy that he placed the device in the bathroom last Tuesday, December 3, 2019, and that since placing it he has only recovered images of himself from it.

10. CLOSE was subsequently detained, transported to MCSO C-Zone substation, and interviewed by an MCSO Investigator. CLOSE was read his *Miranda* warnings, knowingly and voluntarily waived those rights, and provided a statement to the Investigator. In sum and substance, CLOSE admitted to placing the device under the tank of the toilet in order to record naked people using his bathroom. CLOSE further stated that he purchased the Spy camera from Amazon and received it on December 3, 2019. CLOSE stated that, on the same day that he received the spy camera, drove to the Close School of Music and attached it to the bottom of the toilet tank with the camera lens facing towards the toilet bowl. When asked why he placed the camera on the toilet, CLOSE stated he was single and was attempting to capture images of people naked. When asked if he had any other cameras, CLOSE stated that that the spy camera was the only one except for some cameras in the recording studio. CLOSE then indicated that he had downloaded the contents of the camera on the toilet onto his laptop, which was then still located at the Close School of Music. The interview was both audio and visually recorded.

11. At the time this interview was conducted, the Close School of Music was closed and secured pending the completion of a State Search Warrant. No person was allowed to enter or otherwise gain access to the business.

12. On or about December 6, 2019, Supreme Court Justice Victoria Argento signed a search warrant authorizing the search of the Close School of Music. That same day, the search warrant was executed and law enforcement officers seized multiple digital computing devices, including an ASUS laptop computer, model K501U and serial number G3N0CX063175115 (hereinafter the "ASUS Laptop").

13. On or about December 6, 2019, MCSO created a forensic image of the ASUS Laptop. During a preview of the image of the ASUS Laptop, MCSO located three videos of Minor Victim 1.

14. On or about December 9, 2019, MCSO contacted your affiant and provided the above information. That same day, your affiant personally reviewed the three videos containing images of Minor Victim 1. The first two videos are described as follows:

a. The first is a video of Minor Victim 1 sitting on a toilet in the bathroom stall with her pants pulled down. A short time later, Minor Victim 1 is seen standing up from the toilet with her pants still pulled down and her vagina exposed. This video has the file title of “[Minor Victim 1] bath 34” and is approximately 1:01 in length.

b. The second is a video of Minor Victim 1 during a piano lesson with CLOSE. During the lesson, MV1 proceeds to lay down on the piano bench and CLOSE’s leg. CLOSE then takes his right hand and moves Minor Victim 1’s shirt up to expose her stomach. CLOSE then begins to touch MV1’s stomach. Shortly thereafter, CLOSE takes his right hand and begins to rub and touch Minor Victim 1’s hip, leg and vaginal area. As CLOSE is doing this, Minor Victim 1 begins to slide under the piano in what appears to the affiant to be an attempt to prevent CLOSE from touching MV1’s vagina further. CLOSE then proceeds to take his left hand and slide it under Minor Victim 1’s shirt, near her breasts. Minor Victim 1 responds by turning away so that her back is to CLOSE. Shortly thereafter, Minor Victim 1 sits back up and resumes playing the piano. CLOSE indicates to Minor Victim 1 that they are “running out of time to

record.” Minor Victim 1 asks CLOSE if he is recording her and CLOSE responds, “ya.” Minor Victim 1 again asks “right now?” to which CLOSE again responds, “ya.” Minor Victim 1 then asks, “are you going to cut that out?” CLOSE responds, “I’m going to edit it all.” This video has the file title of “VID_20161013_164933” and is approximately 7:30 in length. Based on my training and experience, I believe “20161013” indicates the date the video was recorded.

I have reviewed both of these videos and based on my training and experience involving child pornography investigations, the images constitute child pornography as defined by Title 18, United States Code, Section 2256(8).

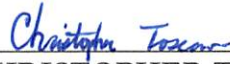
15. MCSO showed freeze frame photos from each of the above videos to CW1, and CW1 confirmed that her daughter, Minor Victim 1, was the child portrayed in both videos.

16. The third video involving Minor Victim 1 that was found on the ASUS Laptop appears to be an edited version of the video described in Paragraph 12(b), above. Specifically, in this third video, all of the sexual touching is removed and only Minor Victim 1’s piano playing remains. Minor Victim 1 appears to be wearing the same outfit in both videos and playing the same song. At the start of this their video, the caption following caption appears: [Minor Victim 1], age 9, “Count on Me,” Bruno Mars.


17. The ASUS Laptop indicates that it was “Made in China” and was therefore transported in or affecting interstate or foreign commerce.

CONCLUSION

18. Based upon the foregoing, I respectfully submit that there is probable cause to believe that PHILIP M. CLOSE did knowingly employ, use, persuade, induce, entice or coerce a minor to engage in sexually explicit conduct for the purpose of producing visual depictions of such conduct, which visual depictions were produced using materials that had been mailed, shipped or transported in or affecting interstate or foreign commerce, in violation of Title 18, United States Code, Section 2251(a).


CHRISTOPHER TOSCANO
Task Force Officer
Federal Bureau of Investigation

Subscribed to and sworn before me
this 10 day of December, 2019.


HON. MARK W. PEDERSEN
United States Magistrate Judge